

**BEFORE THE
U.S. DEPARTMENT OF TRANSPORTATION**

Joint Application of

DELTA AIR LINES, INC.

and

LATAM AIRLINES GROUP S.A., et al.

Under 49 U.S.C. §§ 41308 and 41309

**For Approval of and Antitrust Immunity for
Alliance Agreements**

Docket DOT-OST-2020-0105

**CONSOLIDATED SURREPLY AND MOTION FOR LEAVE TO FILE
OF THE DELTA MASTER EXECUTIVE COUNCIL OF
THE AIR LINE PILOTS ASSOCIATION, INTL**

Delta Master Executive Council,
Air Line Pilots Association, International

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February 14, 2022

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The Air Line Pilots Association, International’s Delta Master Executive Council (“MEC”) respectfully requests leave¹ to file this Surreply concerning the Joint Application² of Delta and LATAM (“Joint Applicants”) for approval of and antitrust immunity (“ATI”) for their proposed joint venture (the “JV”).³ Conceding the propriety of reporting annually about the JV’s impact on U.S. jobs and the balance of flying and growth between the carriers in their Reply, Reply at 4, the Joint Applicants nevertheless object to making such reports available to the

¹ The MEC respectfully requests leave to file this Surreply in response to the Joint Applicants’ Reply dated February 3, 2022. Good cause exists because the Reply objects to critical elements of the labor reporting conditions sought by the MEC, and a full response to those objections will assist the Department in making an informed decision and will cause no prejudice to any party in this proceeding.

² Common names are used for carriers.

³ Delta Air Lines, Inc. and LATAM Joint Application for Antitrust Immunity for Alliance Agreements, DOT OST 2020-0105-0001 (July 8, 2020) (“Joint Application”).

impacted labor parties, as well as to making real-time supplemental reports on subsequent developments. Both objections are without merit.

In objecting to making annual reports available subject to Rule 12 confidentiality protections, the Joint Applicants portray their preferred result as required by well-settled Department precedent. *See* Reply at 7. The Joint Applicants rely on a tentative decision that was made by the prior Administration in a Show Cause Order,⁴ but the issue of confidential access was never definitively resolved by DOT because the ATI application was withdrawn and the Show Cause Order was never finalized.⁵

There are important policy and public interest reasons for the Department to carefully consider the issue in this proceeding and grant labor parties access to the reports. It is the policy of this Administration to promote U.S. wages, benefits, job security, and give U.S. workers the means to “ensure that their voices are heard in their workplaces, their communities, and in the Nation.” Executive Order on Worker Organizing and Empowerment (Apr. 26, 2021). The Department should therefore be guided by that policy in considering the scope and contours of ATI conditions generally, as well as the specific question of whether to grant labor parties confidential access to annual ATI reports.

For the reasons explained by the MEC in its Answer, there are a number of indicia that give rise to the concern that approval of the alliance could give rise to the incentive to export flying opportunities and U.S. jobs to the foreign partner. Those concerns would not be present absent the Department’s action to approve antitrust immunity for the joint venture. It is therefore

⁴ Order 2020-10-13, DOT-OST-2018-0154-0049 (Oct. 23, 2020).

⁵ *See* Order 2020-12-17, DOT-OST-2018-00154-0064 (Dec. 21, 2020) (dismissing WestJet-Delta ATI proceeding upon withdrawal of application).

critical that the labor parties have the ability to monitor the impact of the implementation of the alliance on their jobs and flying opportunities. It makes little sense to include a labor reporting condition if the most impacted parties are not privy to the information and have no ability to assess it.

The Delta MEC is unaware of any material breach of Rule 12 information in the hundreds of thousands, if not millions, of pages of confidential materials that have been produced in the course of decades of ATI practice. The Joint Applicants make no such claim, but raise unspecified and unsubstantiated concerns “as to whether their most confidential information will be protected.” Reply at 6. There is no basis for that concern; however, to the extent that standard Rule 12 access would somehow have a chilling effect, *see* Reply at 5, the MEC suggests that the Department grant Rule 12 access to the impacted labor parties only (i.e., not to the Joint Applicants’ competitors). The Delta MEC’s principals and staff already have access to extensive commercially-sensitive information, subject to non-disclosure agreements, under the pilot collective bargaining agreement. Providing for the MEC’s attorneys to have Rule 12 access to the Company’s annual ATI reports, and to the labor-related components in particular, would enable the MEC’s representatives to engage with and confidentially comment on such information so that DOT has the benefit of the labor parties’ perspective and analysis as it carries out its oversight duties.

The Joint Applicants assertion that annual reporting obviates the need for real-time supplemental reports, Reply at 6 n.14, should likewise be rejected. Where subsequent developments have the potential to impact the financial incentives associated with allocation of flying and growth within the JV, it is critical that DOT have sufficient notice to address those

developments in a timely manner—not a year later, when the parties have already planned with the altered incentives in mind, and mitigation or modification may prove more difficult.

In the case of this JV, the need for such supplemental reporting is not merely speculative: Delta has announced plans to acquire equity in LATAM upon its exit from bankruptcy, will “target” a 10% stake for an as-yet unknown purchase price. If and when the Joint Applicants act on those plans, timely supplemental reporting will be critical to enable DOT to examine the implementing agreements and identify any elements of concern before they become intractable. Likewise, these supplemental reports should be made available to the impacted labor parties, subject to Rule 12 confidentiality procedures, to ensure that DOT is able to make decisions fully informed by the perspective and analysis of the affected employee groups.

Respectfully submitted,

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February 14, 2022

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2022, the foregoing document was served on the following persons via the email addresses listed below in accordance with the Department's

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